

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/931,358  
Inventor(s) : Russell Charles Dodd  
Filed : August 16, 2001  
Art Unit : 3627  
Examiner : Andrew J. Fischer  
Docket No. : 8677  
Confirmation No. : 3584  
Customer No. : 27752  
Title : Customized Customer Portal

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**REPLY BRIEF**

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir,

This is an appeal from the final rejection of pending claims 1-9 and 14 made in an Office Action dated December 23, 2004. A timely notice of appeal was filed on February 23, 2005. Appellants' brief (corrected version) was filed on August 16, 2005, and the Examiner's Answer was mailed on December 19, 2005.

REPLY TO EXAMINER'S ANSWER

**Even with the modified claim construction and modified reading of the Peterson patent, the Examiner's Answer does not show all elements of Claim 1 are in fact met by the Peterson et al. patent.**

Those portions of the Examiner's Answer comprising Section I – Lexicography (Paragraphs 14-18) adopt the Applicants previously proposed claim construction for several key claim terms. While the Applicants agree with all of the definitions of claim terms adopted in these paragraphs, these are not the only disputed portions of the claim with respect to the proper construction.

Much of the Examiner's Answer points out the factual finding that the Peterson et al. patent discloses an electronic information network having a customer and consumer, as those terms are used in Claim 1. Applicants concede that Answer's table on page 15 correctly identifies the "parties" in the Peterson et al. patent and correctly finds such disclosure of parties analogous to the parties claimed in Claim 1. However, Claim 1 requires more than merely a collection of seller, customer, and consumer in a general electronic commerce network. Applicants have never contended that such an arrangement without more is novel, and in fact have conceded in their Appeal Brief, that a system meeting this generic description is known. A closer reading of Claim 1, however, reveals that the claimed system is more particular than the characterization of it given in the Examiner's Answer and that when all claim limitations are properly considered, the Peterson et al. patent does not in fact teach or disclose the claimed system.

**The Final Action and Examiner's Answer at a minimum ignore the features of step (e) of the method of Claim 1 – improperly dismissing these features as inherent or as printed matter which need not be considered.**

Step (e) of Claim 1 requires:

providing to said at least one of said customers product information regarding said at least one consumer product through the use of said interface, wherein said product information provided is customized on the basis of said customer information accessed in step (d), and wherein at least some of the product information provided comprises consumer sales projection information calculated with respect to said at least one of said customers.

The Examiner's Answer has taken several positions with respect to the rejection of Claim 1 and the limitations of step (e) of claim 1 in particular. The first rejection of Claim 1 is based upon anticipation of the claim. The analysis for this finding is contained in Table 2 on Page 20 and in paragraph 39 of the Examiner's Answer. This analysis is essentially that the number of units purchased by a distributor is based upon projected sales because a vendor will purchase a quantity approximating anticipating sales. This analysis sounds logical as far as it goes, but it does not match up to the clear language of Claim 1. Claim 1 requires that the system include a step of providing to a **customer** (a purchaser / reseller of goods) a customized projection of **consumer** (the end user) sales calculated for that **customer**. In other words if the customer (as one example described in the specification explains) is a drug store chain located primarily in the southeastern United States, the sales projections of the consumer product (which might be an improved wet mop) could be tailored for such southeastern drug chains selling such a product (or even for that particular chain). The position in the Examiner's Answer seems to take the position that the total number of items available (which is not even shown to be made available in the Peterson et al. patent) is somehow based upon total expected ultimate sales for to all consumers and therefore, by necessity, calculated with at least respect to any one. Such a conclusion is without any support in the plain language of the claim, is contrary to the examples of the claim in the specification, and is not explained in the Answer as flowing from the teachings of the Peterson et al. patent. The Examiner's Answer implicit construction of step (e) of Claim 1 (as evidenced by its explanation of

how Peterson et al. meets this language) suffers from the flaw that it would apply generically to all sales transactions – or at least those involving sales for re-sale. This language does not by its plain meaning have such generic application, nor is such a meaning consistent with the explanation of the system given in the specification itself. Only by giving this portion of the claim a contrived meaning without support in the application or claim language is the conclusion of anticipation arrived at. Under a claim construction based upon the broadest **reasonable** meaning of the language consistent with the specification, the Peterson et al. patent does not disclose these features of the claim and does not anticipate Claim 1.

As an alternative to the anticipation rejection, the Examiner's Answer contains an obviousness rejection of Claim 1 beginning on paragraph 35. This obviousness rejection is based upon the conclusion that the consumer sales projection information is non functional descriptive material which can be ignored in accordance with In re Gulack as supposedly not functionally related to the method step. See In re Gulack, 703 F.2d 1381, 217 U.S.P.Q. 401 (Fed. Cir. 1983). Both the underlying reading of In re Gulack and its application to the facts of this case are misplaced. This is simply not a "printed matter" case of the type present in the In re Gulack case. This is method which among other steps requires a calculation and requires that the results of this calculation be provided to one the parties necessary for the performance of the method. Such limitations are perfectly legitimate and have been held as proper statutory subject matter. See, e.g., Arrhythmia Research Technology v. Coratonix, 958 F.2d 1053, 22 U.S.P.Q.2D 1033 (Fed. Cir. 1992) (holding the "practical application" of a calculation – a patient's heart waveform displayed temporarily on a monitor; is patentable subject matter); State Street Bank & Trust Co. v. Signature Financial Group, 143 F.3d 1368, 47 U.S.P.Q.2d 1596 (Fed. Cir. 1998) (a fund share price temporarily fixed and displayed for recording is patentable subject matter). To be fair, the Examiner's Answer does not maintain that the subject matter here is non-statutory, but rather that it "non functional descriptive" material. However, In re Gulack is based upon the premise that such material unless functionally related to the substrate is non-statutory subject matter. Such is simply not the case here. The sales projection claimed is a concrete and practical result of a calculation displayed for a useful purpose. Under these facts, dismissing the claim limitation as "non functional descriptive material" merely because it is information based is both a misapplication of

the label and an improper application of the law. Paragraph 36 of the Examiner's Answer makes clear the rejection is premised on the notion that information *per se* is not functionally related to the method step and should be disregarded. This proposition is simply not true and this claim limitation, like all claim limitations generally, must be considered when evaluating the patentability of the Claim.

When **all** limitations of Claim 1 are properly construed, neither the Final Action nor the Examiner's Answer has properly shown that the Peterson et al. patent anticipates or renders obvious any of Claims 1-9 and 14. As such, the rejections of these claims should be reversed.

Respectfully Submitted,

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Date: February 21, 2006

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